ALBERTA

LAW ENFORCEMENT

REVIEW BOARD

ANNUAL REPORT

1995

ALBERTA
LAW ENFORCEMENT REVIEW BOARD

Privileged and Confidential

January 25, 1996

Honourable Brian Evans
Minister of Justice and Attorney General
320 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Mr. Evans:

Re: 1995 Annual Report - Law Enforcement Review Board

In accordance with section 14 of the *Alberta Police Act* (1988), I respectfully submit the 1995 Annual Report for the Law Enforcement Review Board.

Yours truly,

Joanne Taylor-Weir

Joanne Taylor-Weir
Secretary to the Board

cc: P.J. Knoll, Q.C. - Chairman of the Board
C.R. Cunningham - Member of the Board
G.J. Greig - Member of the Board
G. Lowe - Member of the Board
N. McCrank - Deputy Minister - Justice
R.B. Dunster - A.D.M. - Public Security Division

att.

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ALBERTA
Law Enforcement Review Board
1995 Annual Report

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INTRODUCTION

Public accountability is the central issue in complaints against members of professions, such as policing. In Alberta, municipal police officers are subject to a public complaints process through the Alberta Police Act, SA 1988, chapter P-12.01 (with amendments in force as of June 25, 1991). The Act provides that the chief of police is primarily responsible for the disposition of complaints concerning officer misconduct or policies and services. The Law Enforcement Review Board is the appeal body for complaints concerning officer conduct. The Law Enforcement Review Board also has the power to inquire into matters concerning complaints on its own initiative (s.17) and has the powers of a commissioner under the Public Inquiries Act. The activities of the Board for the calendar year 1995 are detailed in this report.

MANDATE/ROLE OF THE BOARD

The Law Enforcement Review Board is a quasi-judicial body established under the *Alberta Police Act*. The Board provides an independent means for reviewing public complaints concerning police conduct and for appeals by officers from disciplinary action. The mandate of the Board is derived from the *Police Act*, Part 2, Sections 9 through 20.

The principal activity of the Board is to hear appeals from citizens who have complained about a police officer's actions and are not satisfied with the disposition of their complaint. Police officers who have been the subject of discipline arising out of a complaint and who are aggrieved with the decision of their chief of police may also appeal to the Board. The Board provides a forum for both citizens and police officers separate and apart from the police service involved. The principal objective of the Board is independent and impartial review.

Hearings are held as required, depending on the number of appeals filed, usually in the municipality where the issue arose. Normally, three Board members are in attendance at each Board hearing. The *Police Act* stipulates that the Board be composed of not fewer than three members appointed by the Lieutenant Governor in Council. The *Police Act* specifies for the purposes of conducting an appeal or an inquiry, a quorum of the Board shall consist of two members of the Board.

BOARD MEMBERSHIP

The following individuals were members of the Law Enforcement Review Board during 1995:

P.J. Knoll, Q.C.	Chairman	Calgary, Alberta
C.R. Cunningham	Member	Edmonton, Alberta
G.J. Greig	Member	Edmonton, Alberta
F.G. Lowe	Member	Calgary, Alberta
D.J. Evans	Member	Pincher Creek, Alberta

The *Police Act* provides that at least one member of the Board be an active member of the Law Society of Alberta, and that the Chairman must be an active member of the Law Society of Alberta. In case of illness, absence or other disability of the Chairman, the member in attendance with the longest period of service on the Board shall act in place of the Chairman.

Term of Membership

As previously noted, during 1995 there were five members of the Law Enforcement Review Board. One Board member resigned in March, 1995, and was replaced through the appointment of Mr. G. Lowe, of Calgary. Members of the Board are appointed by Order in Council for a term of not more than three years and are eligible for reappointment. According to the *Act*, a member continues to hold office until reappointment or a successor is appointed.

Remuneration

Board Members are provided remuneration through general Order in Council #769/93. The Chairman and Members are entitled to paid travel and living expenses in accordance with the Subsistence and Travel Allowance Regulation made by Ministerial Order 6/84, as though they were employees of the government. Details of these Orders are available to the public.

BOARD ACCOMMODATION - STAFF

The office of the Law Enforcement Review Board is located on the 10th Floor, 10365 - 97 Street, Edmonton, Alberta. This office is open during normal business hours to receive inquiries from members of the public, a police officer, or a respective police service in regard to its function.

The Board has one full time staff member assigned to handle and provide administrative support in order to accomplish its mandate. This is the position of Secretary to the Board, who handles administrative and support functions. Regular support is also provided by Counsel to the Board in the handling of appeals.

DISCLOSURE

In 1993 the Board implemented a disclosure policy concerning information held by the Board. During that reporting year, five appellants applied for disclosure. The implementation of this policy has replaced the previous ad hoc approach concerning access to Board information and provides for improvement in the context of fairness and consistency. The disclosure policy was implemented only after consultations with Alberta Chiefs of Police and Police Commissions.

Of the 47 cases handled by the Law Enforcement Review Board in 1995, 15 (32%) of the citizen appellants requested disclosure of Board files. This represents an increase of 18% over 1994. Of those, 9 (60% - representing a decrease of 20% from 1994) disclosures were to appellants from Calgary and 6 (40% - representing an increase of 20% from 1994) from Edmonton.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY LEGISLATION

Since the commencement of the Freedom of Information and Protection of Privacy (FOIP) legislation, the Board has received one request under the Act. The request was processed as required by legislation. The applicant subsequently filed an appeal with the Office of the Privacy Commissioner and both parties participated in a mediation process. The outcome of the appeal remains with the Office of the Freedom of Information and Protection of Privacy Commissioner.

On November 1, 1995, the Board Chairman pursuant to section 83(1) of the Freedom of Information and Protection of Privacy Act, specified that an officer's statement, (memo, report, or other answer) given in response to a public complaint, would be available on a disclosure basis without a formal request for access under the Act.

CONFERENCES AND PRESENTATIONS

The Board has strived to keep abreast of new knowledge and initiatives in the areas of public complaints and police discipline practices. Various conferences and meetings have been attended by the Board Chairman for this purpose. In several instances the Board Chairman has made presentations to the conference assembly. The following conferences or meetings have been attended:

- February, 1995 — Alberta Association of Municipal Police Commissions (Presentation - Calgary).
- September, 1995 — Centre for Police Management and Research/Canadian Research Institute for Law and the Family - Management Challenges in 21st Century Policing (Presentation - Ottawa).
- September, 1995 — International Association of Civilian Oversight of Law Enforcement (Presentation - Vancouver).
- October, 1995 — Recruit Training Class, Calgary Police Service (Presentation).

SUMMARY OF BOARD DECISIONS

Citizen Appeals

Allowed

Mr. T. Cook appealed the decison of unfounded regarding his allegation that a member of the Edmonton Police Service had unlawfully permitted persons to forcibly enter his residence. After hearing the evidence the Board was satisfied that Mr. Cook had met the burden of proof and the appeal was allowed. The Board directed that an Official Warning be placed on the member's file.

Ms. E. McCoy appealed the decision of the Chief of Police regarding her allegation that during an investigation members of the Edmonton Police Service treated two children with unnecessary harshness. After hearing the evidence the Board determined that Ms. McCoy had met the burden of proof and the appeal was allowed. The Board directed that an Official Warning be attached to two of the officers' files and a reference was made to the Edmonton Police Commission

Mr. D. Stevelman appealed the decision of the Chief of Police regarding an investigation surrounding his arrest by a member of the Calgary Police Service. After hearing the evidence the Board was of the view the investigation did not meet a satisfactory standard and the appeal was allowed with admonishments to the officer.

Mr. L. Borowski and Ms. L. Malinowsky had appealed the decision of the Calgary Chief of Police regarding their complaint that an unlawful arrest was made against them and that the penalty that was imposed against the members was not sufficient. The appeal was allowed against one of the members involved to the extent provided in the Judgment. This appeal was dealt with in two parts. In the second part the Board dealt with the appellants' allegation that misconduct occurred in relation to the members exercising their authority as police officers when it was unlawful or unnecessary to do so. The appeal was allowed as provided in that Judgment and both officers were imposed a penalty of a reprimand.

Allowed in Part

Mr. D. Fletcher appealed the decision of "sustained in part" regarding incidents surrounding his arrest by a member of the Edmonton Police Service. A disciplinary hearing for the officer was ordered and carried out where the complaints were found to be "Not Proven". Mr. Fletcher again appealed to the Board. After hearing the evidence presented, the Board admonished the officer and referred this case to the Edmonton Police Commission as to policy.

The appellant L.W. appealed a decision of the Calgary Chief of Police concerning her treatment from a member of the sex crimes unit. According to the appellant several instances of misconduct occurred in that a detective had used obscene and profane language. The appeal was allowed but only to the extent that the Board admonished the officer for one of the alleged instances of crude and vulgar language. The Board recommended to the Chief of Police that the officer be transferred out of the sex crimes unit.

Mr. L. Borowski and Ms. L. Malinowsky appealed the decision of the Chief of Police regarding incidents surrounding their arrest. In a three part Judgment the Board partially allowed the appeal within an increase in penalty to one of the members, and a reprimand to be placed on two members files.

Dismissed Upon Hearing

Mr. F. Maleski appealed the decision regarding his complaint against a member of the Calgary Police Service. After hearing the evidence the Board was of the view that Mr. Maleski had not met the burden of proof and the appeal was dismissed.

Mr. A. Khatib appealed the decision of the Chief of Police regarding his treatment during an arrest procedure by a member of the Calgary Police Service. After hearing the evidence the Board was of the view that the Chief of Police was justified in his determination and the appeal was dismissed.

Ms. M. Stevenson-Dye appealed the decision of "not sustained" regarding a member of the Calgary Police Service. Ms. Stevenson -Dye was not satisfied that the officer had adequately or properly handled a complaint she had filed. The Board concluded that the officer conducted the matter according to proper procedures and the appeal was dismissed.

Mr. T. Rourke appealed the decision of the Chief of Police regarding his complaints against members of the Calgary Police Service. After hearing the evidence the Board was not satisfied that Mr. Rourke had met the burden of proof and the appeal was dismissed.

Mr. V. Just appealed the decision of "unfounded" regarding incidents that occurred following his arrest by a member of the Calgary Police Service . After hearing the evidence the Board was of the view that the Chief's decision was justified and the appeal was dismissed.

Mr. W. Askew appealed the decision of "unfounded" regarding incidents surrounding his arrest by two members of the Calgary Police Service. After hearing the evidence the Board concluded that Mr. Askew had not met the burden of proof which falls to the appellant and the appeal was dismissed.

Mr. W. Grosvenor appealed the decision of "not sustained" regarding incidents that occurred in a retail outlet involving Mr. Grosvenor and a member of the Edmonton Police Service. After hearing the evidence the Board concluded that the complaints had no merit and the appeal was dismissed.

Mr. A. Rourke lodged a complaint against a member of the Calgary Police Service. After an investigation the Chief of Police issued an official warning to the member. Mr. Rourke appealed this decision. After hearing the evidence the Board was of the view that Mr. Rourke had not met the burden of proof and the appeal was dismissed.

Mr. F. Malec appealed the decision of the Chief of Police regarding his allegation that a member of the Lethbridge Police Service used excessive force while placing Mr. Malec under arrest. After hearing the evidence the Board was of the view that the Chief of Police was justified in his determination and the appeal was dismissed. The Board, however, expressed an interest in research of the handcuff industry regarding the design of this equipment.

Ms. J. Rosenthal appealed the decision of the Chief of Police regarding her complaint about incidents prior to her being issued a summons for a traffic violation. After hearing the evidence the Board was satisfied that the officer's actions were appropriate and the appeal was dismissed.

Mr. L. Parton filed a complaint with the Calgary Police Service about an employment centered issue and felt the investigation was not properly handled. After hearing the evidence

the Board was of the view that the Official Warning imposed on the officer was sufficient and the appeal was dismissed.

Mr. J. Boyarski appealed the decision of "unfounded" regarding his complaint that a member of the Calgary Police Service issued him tickets without just cause and treated him in a rude manner. After hearing the evidence the Board concluded that The Chief of Police was justified in his determination and the appeal was dismissed. The officer was commended to the Chief of Police.

Mr. Kelly appealed the decision of "not sustained" regarding incidents surrounding his being issued a ticket for a traffic violation. The Board was of the view that there was no basis for this complaint and the appeal was dismissed.

Ms. S. Wood appealed the decision of "unfounded" regarding her complaint that a member of the Calgary Police Service treated her is a rude and abusive manner. After hearing the evidence the Board concluded there was no misconduct on the part of the officer and the appeal was dismissed.

Mr. R. Prebushewski appealed the decision of "unfounded" regarding his complaint that during an arrest procedure, two members of the Calgary Police Service used excessive force and were verbally abusive. The Board was of the view that Mr. Prebushewski was resistant and his arrest was justified. The appeal was dismissed.

Mr. C. Gates appealed the decision of "unfounded" regarding his complaints that a member of the Calgary Police Service interfered with a court order and was rude and intimidating. After hearing the evidence the Board was not satisfied that Mr. Gates had met the burden of proof which falls to the appellant and the appeal was dismissed.

Mr. A. Robalo appealed the decision of "unfounded" regarding his complaint that a member of the Edmonton Police Service was disrespectful and threatening to Mr. Robalo in connection with a traffic violation. After hearing the evidence the Board concluded that the Chief of Police was justified in his determination and the appeal was dismissed with a caution directed to the officer regarding entry to a citizen's residence

Ms. C. Trott appealed the decision of "not justified" regarding her allegation that after making complaints to the police service, there was ongoing interference in the investigations by a member of the Edmonton Police Service. After hearing the evidence the Board concluded there was no evidence of interference, the decision of the Chief of Police was justified, and the appeal was dismissed. The Board, however, recommended that the member not be involved in further investigations concerning the appellant and another party.

Ms. V. Huet appealed the decision of "unfounded" regarding her allegation that a member of the Calgary Police Service falsified reports and hindered progress in the

investigation of her complaint about her stay in hospital in 1977. Afetr hearing the evidence the Board was of the view that there was no intent by the member to falsify reports and the appeal was dismissed.

Ms. C. Grasdal appealed the decision of the Calgary Chief of Police regarding her allegation that when she was arrested for disturbing the peace excessive use of force and inappropriate conduct occurred in relation to the members she had dealt with. Upon hearing the appeal the Board was obliged to dismiss the appeal as there was no satisfactory proof that the members engaged in any misconduct under the Regulation (356/90). However, both officers were cautioned by the Board and urged to use more restraint in reacting to verbal slights and rudeness.

Ms. E. Larsen and Mrs. M. Collinge appealed the decision of the Calgary Chief of Police regarding their allegations of misconduct of various members with respect to a homicide investigation, and subsequent murder conviction of an individual. After careful consideration, not one of the complained of misconducts were found to have merit and the appeal was dismissed.

Dismissed - Lack of Prosecution

Mr. B. Borzash filed an appeal with the Board but the notifications sent to Mr. Borzash were returned. On the day of the scheduled appeal the Board spoke to this matter by way of a tele-conference. The appeal was dismissed for lack of prosecution

Mr. R. Millward was notified of his appeal hearing but failed to attend. The appeal was dismissed for lack of prosecution.

Mr. P. Cherny appealed the decision regarding a complaint against a member of the Edmonton Police Service. The appellant did not attend the hearing as required and the appeal was dismissed for Lack of Prosecution.

Mr. R. Hollowaychuk appealed the decision of "not proven" on his allegation that during his arrest and transport to detention he was physically abused by a member of the Edmonton Police Service. Mr Hollowaychuk failed to attend at the hearing and the matter was dismissed for lack of prosecution.

Mr. D. McLaren appealed the decision regarding a complaint against a member of the Calgary Police Service. The appellant did not attend the hearing as required and the appeal was dismissed for Lack of Prosecution.

Withdrawn

Mr. & Mrs. Ward advised the Board, prior to their hearing that they wished to withdraw their appeal. The request was granted and the appeal withdrawn.

Ms. C. Witmer applied in writing to the Board to withdraw her appeal. The request was granted and the appeal was withdrawn.

Mr. F.R. Lukens, through his counsel, applied to withdraw his appeal. The request was granted and the appeal withdrawn.

Ms. J. Hines appealed the decision regarding her complaint against a member of the Calgary Police Service. Prior to the hearing Ms. Hines informed the Board that she wished to withdraw her appeal. The request was granted and the appeal withdrawn.

Mr. O. Ibrahim appealed the decision regarding his complaint against a member of the Edmonton Police Service. Prior to the hearing Mr. Ibrahim informed the Board he wished to withdraw. The request was granted and the appeal withdrawn.

Ms. T. Christal and Mr. J. Thomson filed an appeal with the Board. Prior to the hearing they informed the Board they wished to withdraw. The request was granted and the appeal withdrawn.

Mr. D. Batchelder filed an appeal with the Board regarding a complaint against a member of the Edmonton Police Service. Prior to the appeal Mr. Batchelder withdrew his appeal request.

Dismissed - Lack of Jurisdiction

The Calgary Police Commission referred the complaint of Mr. R. Klassen to the Board for review. After thorough consideration the Board declined to hold an inquiry.

Rehearing

Mr. E. Burgoin filed various complaints against members of the Calgary Police Service. The appellant applied to have a new panel established his appeal. The request was granted as stated in the judgment and a new panel constituted to hear the appeal.

Officer Appeals

Dismissed Upon Hearing

Cst. D. Bentley appealed the findings and penalty imposed upon him by way of a disciplinary hearing. After hearing the evidence the Board was of the view that the penalty ordered was insufficient and the suspension time was increased.

Dismissed - Lack of Jurisdiction

Inspector D. Lee appealed to the Board for an application for hearing. After reviewing the evidence the Board concluded that ajudicating on this matter was not within the Board's mandate and the application was denied.

Cst. P. Rose appealed to the Board regarding his complaint against a member of the Calgary Police Service. Prior to the hearing, Cst. Rose withdrew. The Board informed Cst. Rose that in any case his appeal would be dismissed for Lack of Jurisdiction.

Mr. A. Vogelzang, appealed to the Board regarding his dismissal from the Calgary Police Service. The Board reviewed the case as to jurisdiction and found no basis for an inquiry. The appeal was dismissed

Withdrawn

Cst. W. Thorne advised the Board prior to his appeal hearing that he wished to withdraw. The request was granted and the appeal withdrawn.

STATISTICAL ANALYSIS OF APPEALS FILED WITH THE BOARD

Summary of Activities - 1993 - 1995

The following information has been compiled in order to provide a summation of the activities of the Law Enforcement Review Board for the years 1993 to 1995.

During the year 1993, 46 appeals were disposed of by the Board. Of the 46 cases heard, 3 (7%) were allowed (including 1 allowed in part), 29 (63%) were dismissed and 14 (30.4%) were withdrawn. Of the 29 dismissed appeals, 24 (83%) were dismissed upon

hearing and 5 (17%) were dismissed for Lack of Prosecution. The number of Calgary citizen appeals was only slightly higher with 25 (57%) and 16 (41%) respectively. There was 1 (2%) appeal from Camrose.

During the year 1994, 31 appeals were disposed of by the Board. Of the 31 cases heard, 5 (16%) were allowed (including 1 allowed in part), 22 (71%) were dismissed and 4 (13%) were withdrawn. Of the 22 dismissed appeals, 13 (59%) were dismissed upon hearing, 8 (36%) were dismissed for Lack of Prosecution and 1 (5%) for Lack of Jurisdiction. The number of Calgary citizen appeals is higher than Edmonton with 18 (64%) and 7(25%) respectively. There were 3 (11%) appeals from Lethbridge.

The statistical analysis for 1994 does not reflect circumstances where it was considered appropriate to deliver a Board admonishment concerning a particular of conduct. In 1994 the Board admonished one police officer for unsatisfactory conduct. Also absent from the activities tables is a report on Board references to police commissions. In 1994 the Board made two references to police commissions on matters pertaining to policy and one reference to the Assistant Deputy Minister of Justice (Court Services).

In 1995 the Law Enforcement Review Board disposed of 47 appeals. Of the 47 cases heard 7 appeals (22% of appeals heard) were allowed (including three allowed in part) 31 were dismissed and 7 were withdrawn. Of the 31 dismissed appeals 22 were dismissed upon hearing and 5 were dismissed for lack of prosecution. The number of Calgary citizen appeals was higher than the number for Edmonton, with 29 (62%) and 12 (26%) respectively. As was seen in past years, most of the appeals related to charges of excessive use of force, unnecessary use of authority or improper conduct.

As was the case in 1994, the 1995 statistical analysis does not indicate where it was appropriate to deliver a Board admonishment or caution. In 1995 the Board admonished three police officers for unsatisfactory conduct and one officer was cautioned. Also absent from the activities tables is a report on Board references to police commissions. In 1995 the Board made one reference to a police commission on matters pertaining to policy.

During the years 1993, 1994 and 1995 no cases were heard before the Board involving private investigators, security guards or special constables. The following table outlines the activities of the Board for 1993, 1994, and 1995.

SUMMARY OF ACTIVITIES

Table - Cases Disposed of by the Board - 1993 - 1995

DISPOSITION	1993				1994				1995			
	CIVILIAN	POLICE	TOTAL	%	CIVILIAN	POLICE	TOTAL	%	CIVILIAN	POLICE	TOTAL	%
Appeals Allowed			3	7							7	15
- Calgary	2 (*)	1			4				4			
- Edmonton					1*		5	16	3			
Appeals Dismissed Upon Hearing			24	52							22	47
- Calgary	13	1			8	2			17			
- Edmonton	10				2				3	1		
- Medicine Hat												
- Lethbridge					1		13	42	1			
Appeals Dismissed for Lack of Prosecution			5	10.9							5	11
- Calgary	3				5				2			
- Edmonton	2				3		8	26	2			
- Camrose									1			
Appeals Dismissed for Lack of Jurisdiction											4	8
- Calgary						1			1	2		
- Edmonton							1	3				
- Lethbridge										1		
Referred to Attorney General												0
Withdrawn by Complainant			14	30.4							8	17
- Calgary	7	1			1				3	1		
- Edmonton	4	1			1				3			
- Lacombe												
- Camrose	1								1			
- Lethbridge					2		4	13				
Rehearing									1		1	2
- Calgary												
TOTAL	42	4	46	100	28	3	31	100	42	5	47	100
- Calgary	25	3	28	56.6	18	3	21	67	28	3	31	66
- Edmonton	16	1	17	41.3	7		7	22	11	1	12	26
- Medicine Hat												
- Lacombe												
- Camrose	1		1	2.1					2		2	4
- Lethbridge					3		3	11	1	1	2	4

1995 BREAKDOWN OF APPEALS FILED WITH THE LAW ENFORCEMENT REVIEW BOARD

Location/Police Service Involved	ALLOWED	DISMISSED UPON HEARING	ALLOWED IN PART	WITHDRAWN	DISMISSED - LACK OF PROSECUTION	DISMISSED - LACK OF JURISDICTION
EDMONTON	Cook, T.	Grosvenor, W.	Fletcher, D.	Ibrahim, O.	Cherny, P.	
	McCoy, E.	Robalo, A.		Batchelder, D.	Hollowaychuk, R.	
		Trott, C.		Ward, Mr. & Mrs.		
		Bentley, Cst. D. *				
CALGARY	Borowski, /Malinowsky, L.	Maleski, F.	W., L.	Thorne, Cst. W. *	McLaren, D.	Volgelzang, A. *
	Stevelman, D.	Rosentahal, J.	Borowski/Malinowsky,L.	Hines, Ms.	Millward, R.	Klassen, R.
		Khatib, A.		Christal, T./Thomson, J.		Rose, Cst. P. *
		Stevenson-Dye, M.		Witmer, C.		
		Rourke, T.				
		Just, V.				
		Askew, W.				
		Rourke, A.				
		Boyarski, J.				
		Wood, S.				
		Prebushewski, R.				
		Gates, C.				
		Huet, V.				
		Parton, L.				
		Kelly, M.				
		Grasdal, C.				
		Larsen, E./Collinge,M.				
LETHBRIDGE		Malec, F.				Lee, Insp. D.
CAMROSE				Lukens, F.	Borzash, B.	

* - represents officer appeals

Totals = Citizen Appeals = 43
Officer Appeals = 3
Rehearing = 1
TOTAL =47

LAW ENFORCEMENT REVIEW BOARD ACTIVITIES

APPEALS DISPOSED OF BY THE BOARD - 1995

Appeals Allowed	04
Appeals Allowed in Part	03
Appeals Dismissed	
Upon Hearing	22
For Lack of Prosecution	05
For Lack of Jurisdiction	04
Referred to Attorney General	00
Withdrawn by Complainant	08
Rehearing	01
TOTAL	47